



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

March 15, 2019

CJ Ciaramella
MuckRock News
DEPT MR 60291
411A Highland Ave.
Somerville, MA 02144-2516

Subject: FOIA Request

Dear Mr. Ciaramella,

This is a response to your written appeal to the Office of National Drug Control Policy ("ONDCP") regarding your Freedom of Information Act (FOIA) request 2019045.

Exemption 5 of the Freedom of Information Act protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). Courts have held this to "exempt those documents, and only those documents that are normally privileged in the civil discovery context." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975).

The Freedom of Information Act Exemption 5 has been construed to incorporate the presidential communications privilege. See Sears Roebuck, 421 U.S. at 149 n. 16 & 150; Judicial Watch Inc. v. DOJ, 365 F.3d 1108, 1113 (D.C. Cir., 2004). The privilege may be invoked when an agency is "asked to produce documents or other materials that reflect presidential decision-making and deliberations and that the President believes should remain confidential." In re Sealed Case, 121 F.3d 729, 744 (D.C. Cir., 1997). Unlike the deliberative process privilege, "the presidential communications privilege applies to documents in their entirety, and covers final and post-decisional materials as well as pre-deliberative ones." Id. at 745.

The extension of this privilege is limited to communications made by presidential advisers and their staffs "in the course of preparing advice for the President." In re Sealed Case at 752. Only communications "close enough to the President to be revelatory of his deliberations or to pose a risk to the candor of his advisers" are protected. Id. In order for the privilege to apply the withheld records must have been "authored or solicited and received by those members of an immediate White House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given to the President on the particular matter to which the communications relate." See id.; see also Judicial Watch at 1116.

All of the standards for invoking the presidential communications privilege are present in this case. ONDCP's records review showed written evidence that the records at issue were solicited and received by a senior White House advisor and that the information was gathered for the purpose of formulating advice to and briefing the President. Accordingly, the line-by-line

redactions typically required when invoking the deliberative process privilege are not required when the presidential communications privilege applies. Therefore, the records were properly withheld in full, and your appeal is denied.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Kristin Skrzycki', with a stylized flourish at the end.

Kristin Skrzycki
Chief of Staff